IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.38 OF 2006

Shri Namdeo Govind Gore, since
deceased through heirs and L.R.,
Smt.Rangubai Namdeo Gore & Ors. ..Applicants.

V/s.

The State of Maharashtra & Ors. ..Respondents.

Mr.Dilip Bodake for applicants.

Mr.A.R.Patil, AGP for respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 8, 2006.

P.C. :

1. Heard counsel for the parties.

2. This revision application takes exception to the order passed by the SLAO dated 27th October, 2005, rejecting the application preferred by the applicants requesting to make reference under Section 18 of the Act. Three grounds have been mentioned in the impugned order. The first ground is that the application is barred by limitation. There are other two grounds namely that the applicants accepted the compensation amount without recording protest and lastly, that there is nothing on record to suggest that the applicants had registered objection under

section 9(3)(4) of the Land Acquisition Act. In so far as later two grounds are concerned, the applicants are justified in relying on the decision of our High Court in the case of **Manjiri Ranganath Kulkarni V/s. State of Maharashtra reported in 2003(1) All MR 27**, which has taken the view that the application under section 18 can be rejected by the appropriate authority only on the ground that it is beyond limitation or that it was not in relation to the claim for enhancement of compensation awarded for acquisition of land or that application was not by an interested person. That however, will not make any difference to the ultimate conclusion to be reached in this matter.

3. The fact remains that the subject application has been rejected by the SLAO on the ground that it is beyond limitation. For that purpose the dates, which are admitted as can be discerned from the record are that the award was passed on 2nd April, 2004. According to the record of the respondent, Section 12(2) notice was served on 7th November, 2004, whereas the application came to be filed on 21st December, 2004. Obviously, on the basis of these dates no fault can be found with the conclusion reached by the SLAO in rejecting the subject

application being beyond limitation. To get over this position, counsel for the applicants contends that in the revision application it is asserted by the applicants that the service of notice under section 12(2) of the Act effected on the applicants is invalid. This is so because the service was effected on the brother of the applicant and not on the applicant himself. If it is so, limitation will not start running from 7th November, 2004 as is observed by the SLAO. The argument seems to be attractive, but clearly overlooks the averment made in the application preferred before the SLAO. With reference to the question of limitation, jurisdictional facts stated in the application are at page 46 which read thus:

> . "The notice u/s.9(3)(4) was not issued by the SLAO No.4 not only to this applicant but also it is not mentioned in award also. That the award u/s.11 was declared by the land Acquisition Officer No.4 Karmala(Solapur) on 2/4/2004. But the applicant was not present before the LAQ Officer. That the notice u/s 12(2) was send to applicant on 29/10/2004 & said was received on 7/11/2004 to present before SLAO No.4 on 8/11/2004 at Kurduwadi Rest House & hence the contents of award were not known to the applicant. Hence applicant applied for certified copies of award & statement on 3/12/2004 & said was received on 21/12/04. Hence reference filed today is well in time." (emphasis supplied)

It necessarily follows that the case now made out in

the present revision about service of notice on the applicants brother, no such assertion has been made before the SLAO. Going by the fact stated in the application as filed, no reference is made to the fact that the notice under section 12(2) was served on the brother of the applicant and not on the applicant himself. This ground is made out for the first time in the present Revision application which cannot be allowed in exercise of revisional jurisdiction. In the circumstances, this submission will have to be rejected.

4. The next contention canvassed on behalf of the applicant is that the applicant had applied for certified copy after intimation was received, as is stated in the application. The period required for obtaining certified copy of the award will have to be excluded. This submission clearly overlooks the principle settled by the full bench of our High Court in the case of **Suresh Marutrao Jadhav V/s State of Maharashtra & Anr.[2001 Vol.103(4) Bom.L.R. page 897]** as well as Apex Court in the case of **Poshetty & Ors. Vs.State of A.P. [(1996) 11 SCC 213].** It is settled position that the provision of Limitation Act cannot be invoked in so far as proceedings under Land Acquisition Act. This position is no more res

integra. Accordingly, this submission does not commend to me. For the aforesaid reasons, the revision should fail. To get over this position, counsel for the applicant relied on the decision of this court in **2004(4) All MR 173** in the case of **State of Maharashtra V/s. R.D.Patil.** The exposition made in this decision will be of no avail to the applicant, in view of the well settled legal position stated in the decision of the full bench of our High Court as well as the decision of the Supreme Court referred to above.

5. Hence this revision should fail. The same is dismissed.